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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,047	11/09/2001	Michael J. Whalen	032167.0001	1649
7590	04/07/2004			
Kimberly A. Chasteen Williams Mullen Clark & Dobbins Suite 210 One Old Oyster Point Road Newport News, VA 23692			EXAMINER	BREVARD, MAERENA W
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 04/07/2004				

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/053,047	WHALEN ET AL.
	Examiner	Art Unit
	Maerena W. Brevard	3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 8/6/03 .

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 6 and 7 is/are allowed.

6) Claim(s) 1-5 and 8-19 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 09 November 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                    6) Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the shoulder strap of claim 4 and the foldable support beam of claim 6 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3, 5, 12, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butschat.

In accordance with MPEP 2111 and 2112, Butschat discloses a device (10) for carrying paint, a paintbrush and capable of carrying a paint roller comprising:

- A first storage compartment (30) capable of accepting a paint roller and paint;
- A first clip means (40, 42a, 42b);
- A means (20) for attaching the device to a painter;
- The first clip means acts to retain the paint roller such that the paint roller is not submerged in the paint (Figure 5);
- The attachment means attaches the device to a belt (12);

- A support element (24) for maintaining the device in an upright position (Column 3, lines 47-50); and
- The first storage compartment is made of a non-porous, durable, lightweight material consisting of plastic (Column 8, line 8).

*Claim Rejections - 35 USC § 103*

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 8-15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaques in view of Butschat.

Jaques discloses a device (10) for carrying paint and a paintbrush, but not a paint roller. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a paint roller in place of the paintbrush since the examiner takes Official Notice of the equivalence of paint rollers and paintbrushes in varying shapes and sizes for their use in painting and the selection of any of these known equivalents to carry within the paint container would be within the level of ordinary skill in the art.

Jaques further discloses the device comprising a first storage compartment (20) capable of accepting a paint roller and a means (40) for attaching the device to a painter, but does not teach a first clip means for retaining the paint roller at a specified location within the first storage compartment. However, Butschat teaches a device for carrying paint and a paint roller having a first clip means (40, 42a, 42b). It would have been obvious to attach the clip of Butschat on the device of Jaques. Doing so would provide a means of frictionally retaining the handle of the roller within the device.

Regarding claims 8 and 9, Jaques discloses a second storage compartment (30) sized to accept a paintbrush (8, Figure 4).

Regarding claim 10, Jaques discloses the claimed invention except for a second clip means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a second clip means to the second compartment, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding claim 11, the second clip means of Butschat would retain the paintbrush such that the paintbrush is not submerged in paint (Figure 5).

Regarding claims 12-15, the first and second compartments are made from a non-porous, durable, lightweight material consisting of plastic or a lightweight metal (Column 2, lines 42-45 and column 3, lines 2-4).

Regarding claim 19, Butschat teaches a support element (20, 22, 36, 38) for maintaining the device in an upright position (Column 3, lines 45-50), to the same degree claimed.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jaques in view of Butschat as applied to claim 1 in paragraph 5 above, and further in view of Davidson. The modified device of Jaques teaches a carrier having an attachment means but does not teach the attachment means being a shoulder strap. However, Davidson teaches a carrier having a belt and shoulder strap (34) attachments. It would have been obvious to provide the shoulder strap to the modified carrier of Jaques. Doing so would provide additional securing means for the carrier.

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7. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jaques in view of Butschat as applied to claims 1 and 8 in paragraph 5 above, and further in view of Buth.

Regarding claims 16 and 17, the modified carrier of Jaques discloses all of the aforementioned limitations of the claims except, the first and second storage compartments including inserts. However, Buth teaches an insert (21) for paint holders. It would have been obvious to use the liner as taught by Buth in the modified device of Jaques. Doing so would provide easy clean up and enhance usability of the device.

***Response to Arguments***

8. Applicant's arguments filed 2/26/03 have been fully considered but they are not persuasive. The arguments have been addressed in the above-cited rejections.

***Allowable Subject Matter***

9. Claims 6 and 7 are allowed.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hocking and Fellman are cited for paint container inserts.

**11. This action is non-final.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maerena W. Brevard whose telephone number is 703/305-0037. The examiner can normally be reached on M-Th; 8:00 AM-6:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703/308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Maur*  
Maerena Brevard  
April 1, 2004

  
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